

Rules and Regulations Governing the Lawyer Assistance Program

Scope and Purpose

The Lawyer Assistance Program (LAP) was established by the Legislature as a means of identifying and rehabilitating attorneys with impairments due to the abuse of drugs or alcohol, or due to mental illness.

Pursuant to the Business & Professions Code section 6231, the board will establish a committee to oversee the operation of the Lawyer Assistance Program. Section 6231(c) further provides that with the approval of the State Bar's Board of Governors "the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program."

Rule I

Oversight Committee: General Powers

Section 1. The Oversight Committee appointed by the State Bar of California, the Governor, the Speaker of the Assembly and the Senate Rules Committee pursuant to the provisions of the State Bar Act will be known as the Lawyer Assistance Program Oversight Committee ("Committee").

Section 2. The members of the Committee will serve terms of four (4) years and may be reappointed as many times as desired. The board will stagger the terms of the initial members appointed.

Section 3. The State Bar's Board of Governors will, on an annual basis, appoint a Chair and Vice-Chair for the Committee.

Section 3.1. Eligible candidates must have served at least one (1) full year of their term on the Committee and have at least one (1) full year of their term remaining.

Section 3.2. Any Committee member who is interested and eligible may submit his or her name, along with a one page written statement of qualification, no later than November 1. The current Chair will forward these names and statements to the designated Board of Governor's Committee for consideration.

Section 4. Meetings of the Committee may be held at such places in California and at such times as may be fixed by the Committee. Meetings may also be held at the offices of the State Bar, either in San Francisco or Los Angeles, at the call of the Chairperson or the Vice-Chairperson. Notice of the time and place of all meetings will be given in accordance with the Board of Governors of the State Bar of California's Policies Governing Open Meetings, Closed Sessions, and Records of Regulatory Committees.

Section 5. For the transaction of business, a quorum of the Committee will consist of one-half of all members appointed and sitting, plus one. However, less than that number may adjourn from day to day.

Section 6. The Committee is empowered to appoint subcommittees to facilitate the purpose and administration of these Rules. The Committee may act in any matter by a subcommittee composed of not less than two Committee members.

Section 7. Subject to the approval of the Board of Governors, the Committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program.

Section 8. The Committee will establish practices and procedures for the acceptance, denial, completion, or termination of attorneys' participation in the Program, and it may recommend rehabilitative criteria for adoption by the Board of Governors.

Section 9. Written notice may be given by personal service or sent by mail, postage prepaid, addressed to the participant at the participant's official membership records address, and if sent by mail, will be deemed to have been received by the addressee five (5) days after deposit in the mail if the address is within the State of California, ten (10) days after deposit in the mail if the address is outside the State of California but within the United States, and twenty (20) days after deposit in the mail if the address is outside the United States.

Section 10. Unless specified otherwise in these rules, any forms, letters, applications or documents will be deemed filed with the Committee at the earlier of the following:

- (a) When actually received in substantially complete form as defined by the Committee, by the Committee at the State Bar offices in either San Francisco or Los Angeles;
- (b) On the date of the first postmark thereon if the form, letter, application or document is substantially complete as defined by the Committee and was placed in the United States mail postage prepaid and addressed to the Committee at either the State Bar's San Francisco or Los Angeles Offices.

Rule I adopted effective October 10, 2002; amended effective December 10, 2005.

Rule II

Eligibility for Admission to the Lawyer Assistance Program: General Requirements

Section 1. Any attorney may voluntarily enter the Program, for treatment purposes, on a confidential basis. Confidentiality pursuant to this section will be absolute unless waived in writing by the attorney.

Section 2. An attorney currently under investigation by the State Bar or following the initiation of a disciplinary proceeding, may also enter the Program by:

- (a) referral of the Office of Chief Trial Counsel;

(b) referral of the State Bar Court.

Section 3. Acceptance into, or participation in, the Program will not relieve an attorney who voluntarily enters the Program while under investigation, or following the initiation of a disciplinary proceeding, of any lawful duties or obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

Rule II adopted effective October 10, 2002.

Rule III

Administrative Costs and Fees

Section 1. Attorneys will be responsible for payment of all expenses relating to treatment and recovery, including but not limited to the costs of hospitalization, drug testing, group meetings, individual therapy, etc.

Section 2. A reasonable administrative fee may also be charged to attorneys for the purpose of offsetting the costs of administering the Program.

Section 3. To ensure that no member attorney is denied acceptance into the Program solely due to the lack of ability to pay, member attorneys may apply for financial assistance from the fund established for this purpose by the State Bar.

Section 4. Former members may apply to participate in the Program. Former members are not eligible for program sponsored financial assistance.

Rule III adopted effective October 10, 2002.

Rule IV

Confidentiality

Section 1. An attorney who is not the subject of a current investigation may voluntarily enter the Program on a confidential basis. This confidentiality will be absolute unless waived by the attorney.

Section 2. Any information provided to or obtained by the Program, or any subcommittee or agent thereof, will be:

(a) confidential, and this confidentiality will be absolute unless waived in writing by the attorney;

(b) exempt from the provisions of Business and Professions Code section 6086.1;

(c) not discoverable and/or not admissible in any civil proceeding, without the written consent of the attorney to whom the information relates;

(d) not discoverable and/or not admissible in any disciplinary proceeding, without the written consent of the attorney to whom the information relates to;

(e) except with respect to the provisions of subsection (d) of Business and Professions Code section 6232, the limitations on the disclosure and admissibility of information set forth in this section will not apply to information relating to an attorney's failure to cooperate with the Program, or with an attorney's unsuccessful completion of the Program.

Rule IV adopted effective October 10, 2002.

Rule V

Impact on Discipline

Section 1. Acceptance into or participation in the Program will not relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders and applicable statutes relating to attorney discipline.

Section 2. The extent to which an investigation is terminated, formal charges are dismissed, or the level of discipline is reduced as a result of an attorney's participation in the Program, will be entirely dependant upon the terms of the attorney's agreement with the Office of the Chief Trial Counsel or the decisions or orders issued by the State Bar Court.

Rule V adopted effective October 10, 2002.

Rules Governing the Financial Assistance Plan of The State Bar of California Lawyer Assistance Program

THESE ADMINISTRATIVE RULES are promulgated pursuant to the provisions of California Business and Professions Code section 6230 et seq. to aid in the implementation of the Lawyer Assistance Program.

1. POLICY STATEMENT.

(A) The LAWYER ASSISTANCE PROGRAM (hereinafter “PROGRAM”) is available to all members of the State Bar of California (hereinafter “State Bar”), pursuant to the provisions of California Business and Professions Code section 6235(b). These rules provide for financial aid to those attorneys who seek to and are eligible to participate in the PROGRAM (hereinafter “Applicants”) and who would otherwise be financially unable to do so. These rules will be construed for the purpose of enabling eligible Applicants to receive financial aid as permitted, provide for repayment, and, as applicable, forgiveness.

(B) The Lawyer Assistance Program Oversight Committee (hereinafter “COMMITTEE”) as described under Business and Professions Code section 6231, can, as may be required from time to time, assign one or more of its members by way of a subcommittee, or appoint such other designee, to administer, manage or execute the duties of the COMMITTEE under the general supervision of the COMMITTEE and according to these Rules Governing the Financial Assistance Plan (hereinafter “Rules”).

(C) These Rules are adopted pursuant to the authority invested in the COMMITTEE, subject to the approval of the Board of Governors of the State Bar, pursuant to Business and Professions Code sections 6231(a) and (c) and 6232(a), and as otherwise allowed by law.

(D) The State Bar authorizes the COMMITTEE to perform all administrative functions under these Rules and to manage and monitor repayment obligations.

Rule 1 adopted effective December 7, 2002.

2. INCOME ELIGIBILITY CRITERIA.

As set forth in these Rules, the Applicant will be eligible for financial aid if the projected amortized amount of the monthly expense incurred in the matriculation through the PROGRAM exceeds fifty percent (50%) of the Applicant’s net disposable income. The COMMITTEE will determine eligibility as follows:

(A) A family of two earning up to \$40,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$40,001 up to \$60,000 would be eligible for 50% assistance with participation expenses; and earning \$60,001 up to \$80,000 would be eligible for 25% assistance with participation expenses. A family of two earning up to \$60,000 gross income would be eligible for 100% assistance with treatment expenses; earning \$60,001 to \$90,000 would be eligible for 50% assistance with treatment expenses.

(B) A family of three to five (one to four dependents) earning up to \$55,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$55,001 to \$75,000 would be eligible for 50% assistance with participation expenses; earning \$75,001 to \$90,000 would be eligible for 25% assistance with participation expenses. A family of three to five earning up to \$75,000 would be eligible for 100% assistance with treatment expenses; earning \$75,001 to \$100,000 would be eligible for 50% assistance with treatment expenses.

(C) A family of six or more (more than four dependents) earning up to \$65,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$65,001 to \$80,000 would be eligible for 50% assistance with participation expenses; earning \$80,001 to \$90,000 would be eligible for 25% assistance with participation expenses. A family of six or more earning up to \$90,000 would be eligible for 100% assistance with treatment expenses; earning \$90,001 to \$110,00 would be eligible for 50% assistance with treatment expenses.

(D) The COMMITTEE may, at its option, demand and receive payment of the cost of an intake evaluation through a credit card, third party, guarantee, execution of a promissory note, or any other means, before offering further financial assistance to a potential Applicant in undertaking participation in the Attorney Diversion and Assistance Program. Absent countervailing evidence, the COMMITTEE will accept a promissory note for the amount of the intake evaluation with payments at the rate of fifty dollars (\$50.00) per month, due thirty (30) days from the date of conclusion of the intake evaluation, in a form acceptable to the COMMITTEE. The obligation of the Applicant to pay under the promissory note, or to reimburse the State Bar for the intake evaluation, will be separate and apart from any other obligation herein.

Rule 2 adopted effective December 7, 2002; amended effective November 9, 2007.

3. APPLICATION, CONTENTS OF APPLICATION, VERIFICATION, RIGHT OF AUDIT.

(A) The Applicant will duly execute an Application, seeking financial assistance, executing the same under penalty of perjury. The Application will contain a current financial statement showing all income, expenses, along with assets and liabilities of the Applicant. To the extent that the Applicant is married, the Applicant will likewise include any income, expenses, assets and liabilities deemed community property under and pursuant to the laws of the State of California, or declare that such income, expenses,

assets and liabilities are separate property, and upon request, provide documentary proof thereof to the satisfaction of the COMMITTEE.

(B) The Applicant will provide a fully signed federal or state tax return for the preceding twenty-four (24) calendar months, or if no tax return has been filed, a reasonable facsimile thereof.

(C) The COMMITTEE will have the right by which to approve, deny, or condition any Application, and to determine the veracity of all statements therein. The Committee shall have discretion to determine the length of an approval for assistance. No less than sixty (60) days prior to the expiration of that approval, Applicants desiring an extension of the term of their approval for assistance shall submit a written request and justification along with updated tax returns or other similar income verification.

(D) The COMMITTEE will have the right to engage in a random audit of any Application, and may request any other documents, which in the COMMITTEE'S discretion, are necessary to verify any of the specific representations thereunder.

(E) In submitting such an Application, the Applicant waives any right to confidentiality pertaining and relating to any of the financial disclosures.

(F) Any Applicant whose Application is denied by the COMMITTEE'S designee, will have the right to request review of that denial by the COMMITTEE. Any such request for review will be submitted within thirty (30) days of the date notice of the designee's decision to deny is sent to the Applicant.

(G) The final decision of the COMMITTEE may be reviewed by the appropriate committee of the Board of Governors. The final decision of the board committee will constitute the final action of the State Bar.

Rule 3 adopted effective December 7, 2002; amended effective November 9, 2007.

4. LOAN AGREEMENT.

(A) The Applicant will enter into a Loan Agreement that sets forth the terms and conditions of the contract between the State Bar and the Applicant.

(B) The COMMITTEE may, in its discretion, modify the terms of the loan agreement to accommodate the individual circumstances of each Applicant and to provide reasonable assurances that the Applicant will repay the loan.

Rule 4 adopted effective December 7, 2002.

5. INSURANCE.

The fact that an Applicant, or the spouse of an Applicant, may be entitled to insurance, employment, or third party benefits, either in part or in whole, for any of the benefits provided under this PROGRAM, will not preclude the Applicant from seeking and receiving any financial assistance. The fact of insurance, employment, or third party benefits, which may cover, in part or in whole, the costs of such a PROGRAM, may also be considered by the COMMITTEE in determining eligibility. The Applicant will provide, upon request, copies of all insurance policies and other memoranda which document, directly or indirectly, the entitlement of the Applicant to any insurance benefits.

Rule 5 adopted effective December 7, 2002.

6. BENEFITS UNDER AN APPROVED APPLICATION.

(A) EVALUATION COSTS. As set forth by these Rules, the Applicant may be entitled to financial assistance, subject to the terms and conditions mandated by the COMMITTEE.

(B) PARTICIPATION COSTS. In the event that financial assistance is granted, the Applicant will be entitled to a loan in an amount equal to the cost of the basic Lawyer Assistance Program. This loan is subject to and conditioned on an annual review and audit. The COMMITTEE may, at its discretion and subject to any just and reasonable terms and conditions, reevaluate the Application in light of any new or changed information; seek affirmation that the contents thereof are true and correct; or request an updated financial statement reflecting the income and financial obligations of the Applicant, and the spouse of the Applicant.

(C) TREATMENT COSTS. When inpatient or outpatient treatment is recommended by the Evaluation Committee or by staff, the Applicant may be entitled to a loan to cover the cost of this treatment, up to a lifetime cap of \$5,000 toward such expenses. A maximum of \$100 per session of outpatient therapy will be loaned. This limit will not apply to medication management sessions. The COMMITTEE may, at its discretion, agree to exceed this \$100 per session limit due to extenuating circumstances.

(D) The decision to grant or deny financial assistance will be at the sole discretion of the COMMITTEE, subject to administrative review.

Rule 6 adopted effective December 7, 2002; amended effective July 24, 2004; amended effective March 7, 2008.

7. CESSATION OF PAYMENTS, REVOCATION OF BENEFITS.

In the event that the Applicant ceases to participate in the PROGRAM either by complete cessation, or cessation in any other manner as determined by the COMMITTEE, the COMMITTEE reserves the right to discontinue further payments, and the total amount of any loans or advances will be immediately due and payable by the Applicant. Interest will begin to accrue at the rate of seven percent (7%) per annum from the date of cessation or revocation. The COMMITTEE may, at its discretion, allow the Applicant to repay the loan balance in installment payments, amortized at the rate of seven percent (7%) per annum, and assess an administrative fee to offset the cost associated with processing the installment payments.

Rule 7 adopted effective December 7, 2002; amended effective March 7, 2008.

8. OBLIGATION TO REPAY UPON COMPLETION OR SUCCESSFUL PARTICIPATION.

(A) In the event that the Applicant earns a certificate of completion, or otherwise satisfies the COMMITTEE that he or she has successfully completed the PROGRAM, and absent an excuse for payment as set forth below, the Applicant will repay the COMMITTEE for all amounts advanced over a sixty (60) month period, amortized at a rate of seven percent (7%) interest per annum on the declining unpaid principal balance. In the event of default by nonpayment of any installment when otherwise due and payable (all installments due on the 1st day of each month), based upon the amortization schedule provided, the COMMITTEE will have the right, without further notice, to accelerate all the remaining installments, declare the same due and payable, and proceed to initiate appropriate civil litigation in a court of competent jurisdiction.

(B) For any cases of undue hardship, or for other good cause, the COMMITTEE may, at its discretion, waive any default payment, permits reinstatement for any missed installment, or extend the repayment period from a period of sixty (60) months to a period not to exceed a total of seventy-two (72) months.

Rule 8 adopted effective December 7, 2002.

9. FORGIVENESS OF DEBT.

(A) By advancing credit under these Rules, the State Bar is making public funds available to assist the Applicant in resolving problems of substance abuse or mental illness, which may have impaired the Applicant's ability to perform as a member of the legal community, and the Applicant is receiving a financial loan, advance or extension of credit with a commitment to repay.

(B) Within sixty (60) days of earning a certificate of completion, or otherwise satisfying the COMMITTEE that he or she has successfully completed the PROGRAM, an Applicant may submit a written application requesting a waiver of this obligation on the basis that he or she is employed by or providing free legal services to a qualified legal

service provider as defined below. The State Bar may waive and forgive any amount due and payable at the sole discretion of the PROGRAM Oversight Committee following a twenty four (24) month period of continued verifiable, full-time employment. In the event an Applicant is providing free legal services, or employed less than twenty four (24) months, or less than full-time in that capacity, the amount of such employment shall be deemed qualifying for no more than a pro-rata reduction of any amount due. Full-time employment means employment of at least thirty five (35) hours per week, and for no less than a full calendar year, allowing for normal and regular vacations, and may include self-employment if described services are verifiable.

(C) A “qualified legal service provider” for the purposes of this rule is a not-for-profit legal services organization which is receiving or is eligible to receive funds from the Legal Services Program as either a “qualified legal services project” as defined in Business and Professions Code sections 6214 and 6214.5, or a “qualified support center” as defined in Business and Professions Code section 6215.

(D) The loan repayment obligation shall be suspended up to twenty four (24) months, but only during the time the Applicant is engaged in an eligible capacity. Applicant’s eligibility shall be reconfirmed on a monthly basis in the form of a written declaration submitted under penalty of perjury to the PROGRAM Oversight Committee.

(E) The decision to grant or deny an application for relief under this section is within the sole discretion of the State PROGRAM Oversight Committee. Any Applicant whose request for waiver is denied by the Oversight Committee shall have the right to request review of that denial by the Board Committee responsible for Member Oversight. However, the decision of the PROGRAM Oversight Committee shall not be overturned except upon a finding by the Board Committee responsible for Member Oversight that the PROGRAM Oversight Committee abused its discretion in making said decision.

Rule 9 adopted effective December 7, 2002; amended effective July 24, 2004.

10. DUTY TO MAKE ANNUAL REPORTS.

The COMMITTEE will, on an annual basis, make a report to the State Bar of all disbursements and collections, and all such other financial disclosures as may be requested. The COMMITTEE will maintain all records, books, papers, files, and accounting materials to allow for the accurate, detailed and timely reporting of all disbursements and collections.

Rule 10 adopted effective December 7, 2002.

11. COLLECTION ACTIONS WILL BE IN THE NAME OF THE STATE BAR OF CALIFORNIA.

In the event that it becomes necessary to collect a loan, advance, obligation or charge by taking action in any court, including but not limited to any state or federal tribunal, such action will be taken in the name of the STATE BAR OF CALIFORNIA, a public corporation.

Rule 11 adopted effective December 7, 2002.

12. WAIVERS IN THE EVENT OF DEFAULT.

In the event of default of any financial obligation owed by the Applicant to the State Bar, and to the extent that the State Bar files suit to effectuate collection thereof, Applicant, based on the default, waives to the extent necessary, confidentiality with respect to the fact that the Applicant was a participant in the Lawyer Assistance Program and received an advance, loan or extension of credit as consideration in the execution of any promissory note, Agreement, or other evidence of the indebtedness therein. In the event that the Applicant disputes the claim of the State Bar or raises any other matter affirmatively or otherwise, as a defense, the State Bar may in its discretion and only to the extent necessary, release such information as may be required to fairly litigate, defend, or rebut any claim of the Applicant. All necessary records concerning the loan from the Lawyer Assistance Program may be used as evidence in order to prove the Applicant's financial liability.

Rule 12 adopted effective December 7, 2002.

13. RETURNING PARTICIPANTS WITH A LOAN BALANCE

(A) In the event that an Applicant who previously participated in the PROGRAM returns to the PROGRAM with an amount due on a previous loan from the Plan and requests additional assistance, an eligible Applicant will/may be allowed to consolidate the existing debt into a new, current loan, if the amount currently due is \$1,000 or less. This consolidation privilege may only be used once, except that for cases of undue hardship, or for other cause, the COMMITTEE may, at its discretion, agree to consolidate an Applicant's loans more than one time.

(B) Participants with a balance of more than \$1,000 will be required to make payments against their prior balance before being granted additional assistance. The amount of the payment will be determined by the Oversight Committee. For cases of undue hardship, or for other good cause, the COMMITTEE may, at its discretion, waive the payment requirement.

Rule 13 adopted effective March 7, 2008.